

**DEPARTMENT OF STATE REVENUE****LETTER OF FINDINGS NUMBER: 99-0071RST****Sales Tax****For Years 1995 through 1997**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES****I. Sales Tax – Bad Debt Deductions**

**Authority:** Ind. Code § 6-2.5-2-1;  
Ind. Code § 6-2.5-6-7;  
Ind. Code § 6-2.5-6-9;  
Ind. Admin. Code tit. 45, r. 2.2-3-5.

The taxpayer protests the assessment of sales tax on the purchase price of vehicles sold when the taxpayer has not collected full payment from its customers.

**II. Tax Administration – Penalty**

**Authority:** Ind. Code § 6-8.1-10-2.1.

**STATEMENT OF FACTS**

The taxpayer is an Indiana sole proprietorship and registered motor vehicle dealer engaged in the business of selling used motor vehicles to the public. The taxpayer does business at one location in Anderson, Indiana. The taxpayer offers financing to its customers as a "buy here – pay here" operation. A sales and use tax audit was completed on October 29, 1998. The auditor's review of the taxpayer's records did not reveal any purchases subject to use tax. However, the audit report indicates a discrepancy between the taxpayer's sales as reported on its sales tax returns and the sales reported on the Certificates of Gross Retail or Use Tax Paid on the Purchase of Motor Vehicle or Watercraft, Form ST-108. As a result, the taxpayer was assessed sales tax based on the total taxable sales as represented by the ST-108 forms.

**I. Sales Tax – Bad Debt Deductions**

**DISCUSSION**

The taxpayer's position is that it should not be assessed sales tax on the full sales price of vehicles it sold when customers fail to pay the entire purchase price. In other words, the taxpayer argues that it should not have to pay sales tax on money it never collected from its customers. The taxpayer is essentially arguing that it should qualify for bad debt deductions, thereby reducing its sales tax liability.

“An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana. The retail merchant shall collect the tax as agent for the state.” Ind. Code § 6-2.5-2-1.

The Indiana Administrative Code provides:

If the [motor] vehicle is purchased from a registered Indiana motor vehicle dealer, the dealer must collect the tax and provide the purchaser a completed form ST-108 showing that the tax has been paid to him; or if the purchaser claims exemption and no tax is collected by the dealer, the certificate at the bottom of form ST-108 must be completed and signed by the purchaser.

Ind. Admin. Code tit. 45, r. 2.2-3-5(c).

Even if the taxpayer did not actually collect the amount of sales tax due, it has a duty to remit the proper amount to the Department.

[A] retail merchant shall pay to the department, for a particular period, an amount equal to the product of:

- (1) five percent (5%); multiplied by
- (2) the retail merchant's total gross retail income from taxable transactions made during the reporting period.

The amount determined under this section is the retail merchant's state gross retail and use tax liability regardless of the amount of tax he actually collects.

Ind. Code § 6-2.5-6-7.

Provision is made for the deduction of bad debts, that is, the inability of the taxpayer to collect the full amount of the purchase price from its customers. The bad debt deduction will result in a corresponding reduction in the amount of sales tax the taxpayer must remit to the Department. In order to claim a bad debt deduction, the taxpayer shall deduct from his gross retail income an amount equal to his receivables which:

- (1) resulted from retail transactions in which the retail merchant did not collect the state gross retail or use tax from the purchaser;
- (2) resulted from retail transactions on which the retail merchant has previously paid the state gross retail or use tax liability to the department; and
- (3) were written off as an uncollectible debt for federal tax purposes during the particular reporting period.

Ind. Code § 6-2.5-6-9.

The taxpayer in the instant case did collect the sales tax from the purchaser as indicated by the signed ST-108 forms submitted by the taxpayer. Therefore, the first requirement for claiming a bad debt deduction is not met. Secondly, the taxpayer did not previously pay the sales tax liability to the Department. The second requirement is not met. Finally, the taxpayer has not written off the uncollectible debt on its federal tax returns. The taxpayer, in this case, has failed to meet any of the requirements of Ind. Code § 6-2.5-6-9. The taxpayer cannot claim a bad debt deduction and, in that way, reduce its sales tax liability. The audit report correctly assessed the sales tax liability against the taxpayer.

### **FINDING**

The taxpayer's protest is denied.

## **II. Tax Administration – Penalty**

### **DISCUSSION**

The taxpayer protests the imposition of a ten percent (10%) negligence penalty for its failure to remit the full amount of sales tax due the Department. In its protest letter, the taxpayer maintains that it had prepared its sales tax returns to the best of its ability based on its understanding of the applicable tax statutes.

Ind. Code § 6-8.1-10-2.1 permits the Department to impose a ten percent (10%) negligence penalty. However, this code section also provides that if the failure to pay the tax deficiency "was due to reasonable cause and not willful neglect, the department shall waive the penalty." Ind. Code § 6-8.1-10-2.1(d).

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence.

Ind. Admin. Code tit. 45, r. 15-11-2(b).

The taxpayer must demonstrate that its actions involved the use of reasonable care, caution, or diligence in attempting to comply with the law in order to avoid a penalty. The taxpayer has not done this with respect to its failure to remit the full amount of sales tax due the Department. Therefore, the penalty was properly assessed in this case.

**FINDING**

The taxpayer's protest is denied.